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APR -7 2017

OAKLAND RENT ADJUSTMENT

April 6, 2017

VIA U.S. MAIL

Rent Control Board for the City of Oakland  
Residential Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612

**Re: Brief in Opposition to the Appeal by Brianne Ullman**  
RAP Case No.: T16-0073 (*Ullman v. Tse*)  
Hearing Date/Time: April 20, 2017 at 7:00 p.m.  
Respondents: James Coleman & Christopher Tse  
Property Address: 4410 Edgewood Ave., Unit B  
Oakland, CA 94602

## I. INTRODUCTION<sup>1</sup>

The tenant (appellant) is unreasonably challenging a lawful rent increase to try to force her former landlord to pay her tens of thousands of dollars in exchange for the tenant's dropping her malicious threats of civil litigation and moving out of the unit. Tenant's intimidation tactics are reinforced by the veneer of tenant being a solo practitioner attorney, while the respondents are lay persons of modest means.

Tenant's only argument is that her landlord was not a "bona fide purchaser for value" within the meaning of Civil Code section 1954.52, because the tenant *suspects* the landlord had acquired the unit in a "fake" sale. Why does she think this was not a genuine transaction? Because the unit changed hands in a private sale between two friends, the parties knew that the sale would exempt the unit from rent control laws, the buyer gave notice of a rent increase after the purchase, and the seller later attempted to repair a broken faucet in tenant's unit.

What did the Hearing Officer think of tenant's claims after reviewing the paper record and conducting a lengthy evidentiary hearing? The findings of fact describe tenant's accusations as "[p]ure speculation" and "conjecture," adding that "[t]here is no evidence of a conspiracy" and "no evidence that the prior owner did anything out of

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<sup>1</sup> At issue in this appeal before the Board is only the matter of *Ullman v. Tse* (Case No. T16-0073); the matter of *Hellman v. Tse* (Case No. T16-0074) that was also covered by the Hearing Decision, dated June 23, 2016, is not before the Board because there is no appeal pending as to that second matter.

ordinary.” (Exhibit A<sup>2</sup> [Hearing Decision], p. 6 at ¶¶ 2, 5.) The Hearing Officer correctly observed that there is no law against selling real estate to people you know, and that there is no evidence that this “private sale is somehow suspect.” (*Id.*) As a result, the buyer was found to be a bona fide purchaser for value and the unit was found to be exempt from rent control. (Exhibit A, p. 5 at ¶ 5, p. 6 at ¶ 1.)

The tenant appealed the Hearing Decision. Her brief, littered with irrelevant and sometimes false statements, does not argue that the Hearing Officer made an error of law. Instead, the tenant wishes the Board to completely re-write existing law—*without any legal support*—to provide that Section 1954.52 “should also mean” that the original converter cannot exempt his property from rent control by conveying it to a friend. (Exhibit B [Brief on Appeal], p. 3 at ¶ 3.) Carving out ‘friends’ (whatever that means) from the persons that a landlord can sell property to would be unconstitutional, completely misguided and illegal governmental restriction on an owner’s right to convey property. Tenant further argues that the Hearing Officer did not afford due deference to tenant’s misguided web of speculations and conjectures.

Finally, the tenant threatens—*yet again*—to go on a fishing expedition in the Superior Court: “Tenants have filed or will file a civil suit in Alameda County which will [give her ‘access to the full discovery tools available in the civil system’ (*Id.*, p. 2 at ¶ 3) and] open up the appropriate records necessary to deciding this case.” (*Id.*, p. 4 at ¶ 2.) Two years after the first threat there is still no lawsuit but the intimidation continues.

Respectfully, the Board should not condone a shake-down, but affirm the Hearing Decision and commend the Hearing Officer for her thoughtful and well-reasoned decision.

## II. STANDARD OF REVIEW

The appellant Brianne Ullman (“Ullman” or “Appellant”) has invoked three separate grounds for her appeal of the Hearing Decision:

- The decision raises a new policy issue that has not been decided by the Board;
- The decision is not supported by substantial evidence in the case record; and
- Appellant was denied a sufficient opportunity to present her claim.

The questions whether the decision by the Hearing Officer raises a new policy issue and whether Ullman was denied a sufficient opportunity to present her claim are properly left to the sound discretion of the Board. As argued below, both of these questions should be readily answered in the negative.

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<sup>2</sup> All references to “Exhibit” herein shall refer to the exhibits attached to this Opposition Brief. For the convenience of the Board, paragraphs in the Hearing Decision (Exhibit A) and Ullman’s Brief on Appeal (Exhibit B) have been numbered by hand.

The question whether the Hearing Decision is supported by substantial evidence must be decided within an established framework for the substantial evidence standard of review, where findings of the lower tribunal will be upheld if they are supported by **any** substantial evidence in the record. *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733. The word “substantial” refers to the quality of the evidence, not the quantity. *Hope v. California Youth Auth.* (2005) 134 Cal.App.4th 577, 589. The testimony of a single witness, even that of respondent, can provide the requisite substantial evidence, regardless of the amount of evidence to the contrary. See *Marriage of Mix* (1975) 14 Cal.3d 604, 614.

In applying the substantial evidence standard, an appellate tribunal is “bound by the established rules of appellate review that all factual matters will be viewed most favorably to the prevailing party,” and “[a]ll [evidentiary] conflicts, therefore, must be resolved in favor of the respondent.” *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926. All of the respondent’s evidence is accepted as true and the appellate tribunal will draw all favorable inferences that may reasonably be drawn from such evidence. *Estate of Leslie* (1984) 37 Cal.3d 186, 201. Finally, the appellate tribunal cannot reweigh the evidence. *In re E.B.* (2010) 184 Cal.App.4th 568, 578. Even if the tribunal believes the evidence to be in appellant’s favor, it will not reverse the lower tribunal’s judgment on that basis. *Albaugh v. Mount Shasta Power Corp.* (1937) 9 Cal.2d 751, 767-768.

### III. STATEMENT OF FACTS<sup>3</sup>

#### A. **Tse lawfully converted the building into three condominiums.**

The building at issue in this appeal is located at 4410 Edgewood Avenue in Oakland (“Building”). Respondent Christopher Tse (“Tse”) purchased the Building in or about 2005. (Exhibit A [Hearing Decision], p. 2 at ¶ 5.) At the time of the purchase, the building contained three apartments of approximately the same size and configuration. (*Id.*) Tse began a condominium conversion project in 2007. (*Id.*) A year later, Tse was given separate Assessor Parcel Numbers (“APN”) for each unit and he started paying property taxes for each of the three parcels. (*Id.*) In April 2010, Ullman moved into Unit B of the building. (Exhibit A, p. 3 at ¶ 3)

In a transparent effort to “see what sticks,” Ullman’s brief on appeal begins with a falsehood as she states in the second sentence of her brief that the “2007 condo conversion ... [was] never completed.” (Exhibit B, p. 1 at ¶ 1.) No evidence or argument is offered by Ullman in support of this statement, and her appeal does not address the directly relevant finding made by the Hearing Officer:

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<sup>3</sup> The respondents are mindful of O.M.C. § 8.22.120(B)(4), which provides that “Appeals shall be based on the record as presented to the Hearing Officer unless the Board determines that an evidentiary hearing is required.” Unless otherwise noted, this Statement of Facts is based on the facts and exhibits recited in the Hearing Decision dated June 23, 2016, attached hereto as Exhibit A.

The RAP does not have jurisdiction over whether or not the units in question were legally subdivided. At the time the tenants' petitions were filed, each of the units in question had individual [APNs]. Therefore, they were de facto condominiums (units that could be sold separately.) Whether or not the condominium status was improperly granted is not a determination that can be made by the RAP.

(Exhibit A, p. 5 at ¶ 5.) In the absence of arguments to the contrary, this finding is conclusive for the purposes of this appeal.

**B. Ullman interfered with Tse's efforts to sell the building through a broker.**

On March 3, 2015, Tse informed Ullman that he has decided to put the Building up for sale due to "[t]he financial burden caused by both higher utility bills and my mortgage having adjusted to unaffordable rates[.]" (Exhibit D [Email Notice].) Ullman, being a recently minted lawyer, understood that a sale of her unit will make it exempt from rent control and she vowed to resist the sale.

In May 2015, Tse listed the Building (to be sold together or as individual condos) for sale with a realtor. (Exhibit A, p. 2 at ¶ 7.) When the realtor visited Unit B for a walk-through, she found a letter left by Ullman for the realtor that included information designed to deter anyone from selling or purchasing the property. (Exhibit A, p. 2 at ¶ 7, p. 3 at ¶ 1.) The realtor was so distraught by the contents of the letter that she demanded that Tse sign a "Cancellation of Listing" agreement the very next day. (*Id.*) Concerned that Ullman will attempt to sabotage a listing with any broker, and possibly cause a lawsuit, Tse took the Building off the market before any offers were made. (Exhibit A, p. 3.)

**C. Tse sold Units A and B in a private sale and retained ownership of Unit C.**

Respondent James Coleman ("Coleman") and Tse were old friends and Coleman knew that Tse was struggling to pay the mortgage and utilities on the Building. (Exhibit A, p. 3 at ¶ 2.) In November 2015, Coleman approached Tse about purchasing Unit B, the unit that Coleman once rented for himself. (Exhibit A, p. 3 at ¶ 6.) Coleman and Tse had an appraisal done, looked at comparable sales and agreed on a price based on the appraisal. (Exhibit A, p. 3 at ¶ 2.) Unit B was sold to Coleman in a private sale on December 2, 2015, and a Grant Deed was recorded in the Alameda County Recorder's Office showing the purchase price of \$454,000. (*Id.*; Exhibit E [Grant Deed, Exhibit 4 at the hearing].)

Also on December 2, 2015, Tse caused the recordation of a 12-page Deed of Trust that provided notice to the world of the terms and conditions of the sale, including

**D. Ullman tried to avoid the rent increase by attempting to force a settlement.**

Having realized that, despite the interference with the real estate broker, Unit B was sold to Coleman and was now exempt from rent control, Ullman changed her strategy to one of delay and intimidation. After renting from Tse for almost six (6) years, with close to two (2) years as next-door neighbors<sup>6</sup>, Ullman learned Tse to be a soft-spoken person of limited means who dislikes confrontations. Ullman, on the other hand, was a recent law school graduate and thought she could tie Tse up in knots with little or no cost or risk to herself. Immediately upon receipt of the rent increase notice, Ullman filed a petition with the Rent Control Board that accused Tse and Coleman of fraud. She also repeatedly threatened to file an action in Superior Court and drown Tse and Coleman in expensive, privacy-busting discovery.

On or about July 5, 2016, Ullman (acting for herself and for Sarah Hellman, the resident of Unit C who was represented by Ullman) made an offer to Tse and Coleman that her and Hellman will vacate their units, abandon their petitions and drop the threats of future litigation in exchange for a payment by the landlords of \$80,000.<sup>7</sup> Tse and Coleman refused and the hearing followed.

**E. Hearing Officer rejected Ullman's claims that the sale of Unit B was "fake".**

At the June 17, 2016 hearing, Ullman made the very same arguments that she is now making to the Board. The Hearing Officer soundly rejected Ullman's arguments; she issued a decision that did not identify a single flaw in the sale of the units and found Coleman to be a bona fide purchaser for value. (Exhibit A, pp. 5-6.)

For convenience of the Board, Ullman's distinct factual allegations of a "fake" sale and the related testimony and findings by the Hearing Officer are correlated below:

- Ullman claimed the units were not legally subdivided. (Exhibit A, p. 5 at ¶ 5.) The Hearing Officer found that because each unit was issued an individual APN number, "they were de facto condominiums (units that could be sold separately)." (*Id.*)
- Ullman alleges that Tse "abruptly took the property off the market," after he listed it with a real estate broker. (Exhibit B, p. 1 at ¶ 1.) The Hearing Decision recites the

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<sup>6</sup> It was established at the hearing that Tse lived in Unit C from sometime in 2009 to January 1, 2012. (Exhibit A, p. 2 at ¶ 6.) Ullman moved into Unit B in April of 2010. (Exhibit A, p. 3 at ¶ 3.)

<sup>7</sup> Because the July 5, 2016 meeting between Ullman and Tse took place after the June 17, 2016 hearing, the fact of the \$80,000 settlement demand was not presented to the Hearing Officer. While the fact that such an outrageous demand was made is not necessary to deciding this appeal, this shows a pattern by Ullman of trying to force a settlement using threats of litigation. These threats feature prominently in Ullman's appeal. (See, e.g., Exhibit B, p. 4 at ¶ 2.)

evidence received at the hearing that the listing was cancelled by the broker after Ullman left a threatening letter for the broker. (Exhibit A, p. 2 at ¶ 7, p. 3 at ¶ 1.)

- Ullman implies some untoward motive based on the fact that Tse's sale of Unit B to Coleman took place a day after the conclusion of the December 1, 2015 Rent Board hearing concerning proposed rent increase due to capital improvements to the Building. (Exhibit B, p. 1 at ¶ 3.) Evidence presented at the hearing shows that the sale transaction was set in motion long before the December 1 hearing date, as it was Coleman who approached Tse about purchasing one of the units, he visited the property a month earlier, "[t]hey had an appraisal done, they looked at comparable sales," and an 11-page Deed of Trust was negotiated and drafted prior to December 2, 2015. (Exhibit A, p. 3 at ¶ 2; Exhibit F [Deed of Trust].)
- Ullman continues to complain in her brief on appeal, as she did during the hearing, that "Coleman had entered my unit one month prior, for approximately 60 seconds, before making the purchase. He did not even look at the bedrooms." (Exhibit B, p. 1 at ¶ 3; Exhibit A, p. 4 at ¶ 3.) What Ullman neglects to tell the Board is that it was established at the hearing that Coleman "used to live in the unit that he purchased from Tse" and that Coleman "had actually been in all three of the apartments [before the condo conversion] in the subject property." (Exhibit A, p. 3 at ¶¶ 6, 7.)
- Ullman reaches the apogee of her conspiracy theories with the accusation that the rent increase notices sent to her after Tse's sale of Unit B to Coleman "appear to have been actually authored and delivered by Mr. Tse," and "emails sent from James4410@gmail.com appear to be from Mr. Tse." (Exhibit B, p. 1 at ¶ 3; Exhibit A, p. 4 at ¶ 2.) The Hearing Officer allowed Ullman to cross-examine Coleman on these issues and accepted Coleman's testimony that "he has written her eviction notices and posted them on her door," and that he "has an email address that he uses that is james4410@gmail.com that only he has access to; Mr. Tse does not have access to that email account." (Exhibit A, p. 3 at ¶ 8, p. 4 at ¶ 1.) Tse likewise testified at the hearing that he "does not have access to that account." (Exhibit A, p. 4 at ¶ 1.)
- Ullman's twisting of the facts is evidenced in her statement on appeal that "Mr. Coleman did not even show up at the June 17 rent board hearing. He allowed Mr. Tse to act as his representative." (Exhibit B, p. 2 at ¶ 1.) The cover page of the hearing decision shows that Coleman filed a written response to Ullman's petition and appeared at the hearing "by phone." (Exhibit A, p. 1.) The hearing decision is also replete with statements made by Coleman during the hearing in response to questions from the Hearing Officer and in connection with an extensive cross-examination by Ullman. (*See, e.g.*, Exhibit A, p. 3 at ¶¶ 6-8.) Why burden the Board with misleading statements unless you have a case to begin with?
- Ullman senses a hallmark of a conspiracy from the fact that *once*, when her shower faucet broke, "it was Mr. Tse who entered my unit in a failed attempt to make a

repair.” (Exhibit B, p. 1 at ¶ 3.) Tse testified at the hearing that he tried to take care of a leaking faucet for Coleman “because he was there doing work on the property.” (Exhibit A, p. 4 at ¶ 8.) The Hearing Officer considered this testimony in arriving at her finding that “Ullman’s claims are conjecture,” and found that “[s]ince Coleman and Tse remain friends, the fact that Tse acted on Coleman’s behalf to attempt a repair of a broken faucet does not change the basic facts.” (Exhibit A, p. 6 at ¶¶ 1, 5.)

- Ullman continues to peddle the fiction that Coleman and Yahaghi acted not as arms-length buyers but as Tse’s “agents,” collectively acting toward the goal of pricing all of the tenants out of their units and selling the Building as a whole presumably for more money. (*See, e.g.*, Exhibit B, p. 2 at ¶¶ 4, 5.) The Hearing Officer had already heard and disposed of this theory as well: “There is no evidence that Tse paid any money to Coleman to purchase the property, or that Tse continues to control the unit in any substantive way.” (Exhibit A, p. 6 at ¶ 1.) Tse also testified at the hearing that “he did not pay any money to Ms. Yahaghi to assist her in the purchase of the property from him.” (Exhibit A, p. 3 at ¶ 5.)
- Finally, Ullman is undeterred in her drive to threaten litigation to find proof of some kind of wrongdoing: “Until I have access to the full discovery tools available in the civil system, I cannot tell you whether actual money changed hands between Mr. Tse and Mr. Coleman or Mr. Tse and Ms. Yahaghi. I suspect that it did not.” (Exhibit B, p. 2 at ¶ 3.) Never mind that: (1) Coleman testified that he made a down payment of \$20,000 (Exhibit A, p. 3 at ¶ 6); (2) Coleman and Tse executed a recorded Deed of Trust for seller financing that was admitted into evidence (Exhibit F); and (3) Tse paid off his mortgage with the proceeds from the sales to Coleman and Yahaghi, and “[h]e provided proof that he paid off his mortgage.” (Exhibit A, p. 4 at ¶ 7.)

In sum, on the record before this Board, there is no evidence whatsoever that Tse’s sale of Unit B to Coleman was a “fake” sale. As summarized by the Hearing Officer in her findings, “[t]here is no evidence of a conspiracy,” and “no evidence that the prior owner did anything out of the ordinary. Ullman’s claims are conjecture.” (Exhibit A, p. 6 at ¶ 5.)

**F. Hearing Officer found Coleman to be a “bona fide purchaser for value”.**

After considering all of the evidence presented at the hearing, the Hearing Officer found that “Coleman was a bona fide purchaser for value.” (Exhibit A, p. 6 at ¶ 5.) This finding was made despite the arguments strenuously advanced by Ullman that a private sale to a friend is not sufficiently arms-length or is otherwise suspect enough to take it out of the “bona fide purchaser” realm. (*See, e.g.*, Exhibit B, p. 2 at ¶¶ 2-5.)

The absurdity of such a proposition as a legal matter will be discussed in the Argument section below. For this Statement of Facts, however, it is important to note the comments made by the Hearing Officer in response to these accusations: “Ullman’s

contentions that there is something wrong with the purchase because Tse sold both of the units he sold to longtime friends is *pure speculation*. There is no evidence of a conspiracy. Tse has the right to sell in a private sale, or to sell the units on the open market. He chose to sell in a private sale to someone he knows. ... There is no law against this.” (Exhibit A, p. 6, ¶¶ 2, 4 (emphasis supplied).)

#### IV. ARGUMENTS IN OPPOSITION

##### A. Coleman was correctly determined to be a bona fide purchaser for value.

At the heart of this appeal is the provision contained in the California Civil Code section 1954.52(a)(3)(B)(ii) that exempts from rent control “[a] condominium dwelling or unit that has ... been sold separately by the subdivider to a bona fide purchaser for value.” Section 1954.52 does not define “bona fide purchaser” but, in general, “the two elements of being a BFP are that the buyer (1) purchase the property in good faith for value, and (2) have no knowledge or notice of the asserted rights of another. [citation].” *Melendrez v. D & I Inv., Inc.* (2005) 127 Cal.App.4th 1238, 1251.

The “bona fide purchaser” language was added to Section 1954.52 when it was amended in 2001, so that “the landlord would be required to actually sell a unit, rather than merely initiate the conversion paperwork, in order to have rent controls removed.” *Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, 1047, review denied (Feb. 11, 2015). This amendment was intended to close a loophole in the statute after “some apartment property owners have taken advantage of the law by obtaining a permit to convert to condominiums, but never completing the process.” *Id.*

Whether Coleman is a bona fide purchaser is a question of fact to be decided by the Hearing Officer. *See Horton v. Kyburz* (1959) 53 Cal.2d 59, 67. On appeal, the finding of the Hearing Officer will be affirmed unless it is not supported by substantial evidence. *See Melendrez, supra*, at p. 1254. In other words, so long as there is any substantial evidence in the record to support the findings of fact made by the Hearing Officer, the substantial evidence appellate standard of review compels the Board to uphold the Hearing Decision. *See Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733; see also *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926 (“all factual matters will be viewed most favorably to the prevailing party,” and “[a]ll [evidentiary] conflicts, therefore, must be resolved in favor of the respondent.”); see also *In re E.B.* (2010) 184 Cal.App.4th 568, 578 (the appellate tribunal cannot reweigh the evidence).

##### (1) Coleman is a BFP because substantial evidence supports the finding that he purchased Unit B in good faith for value.

With respect to the first prong of the “bona fide purchaser” definition, the question before this Board is whether the record before it contains any substantial (*i.e.*, quality) evidence that Coleman purchased the property “in good faith” and “for



value.” This question must be answered in the affirmative based on the following relevant facts that were admitted into evidence:

- Coleman purchased the property for \$454,000. (Exhibit A, p. 6 at ¶ 1.)
- Coleman paid a downpayment of \$20,000. (Exhibit A, p. 6 at ¶ 1.)
- Tse caused a Grant Deed to be recorded on 12/2/15. (Exhibit E.)
- Tse financed part of the purchase price and caused a Deed of Trust to be recorded on 12/2/15. (Exhibit A, p. 3 at ¶ 6; Exhibit F.)
- Tse had Unit B listed with a real estate broker. (Exhibit A, p. 2 at ¶ 7.)
- Tse and Coleman had Unit B appraised and based the purchase price on the appraisal. (Exhibit A, p. 3 at ¶ 2.)
- Coleman suggested to Tse that he purchase the unit. (Exhibit A, p. 3 at ¶ 8.)
- After the purchase, Coleman received Ullman’s rent checks and deposited them into his bank account. (Exhibit A, p. 3 at ¶ 8.)
- After the purchase, Coleman has written notices to Ullman and posted them on her door. (Exhibit A, p. 3 at ¶ 8.)
- After the purchase, Coleman used his [james4410@gmail.com](mailto:james4410@gmail.com) email account to communicate with Ullman regarding her tenancy; only Coleman has access to that account. (Exhibit A, p. 3 at ¶ 8 and p. 4 at ¶ 1.)
- Tse used the proceeds from the sale of Unit B to pay off his mortgage. (Exhibit A, p. 4 at ¶ 7.)
- Hearing Officer found no evidence of wrongdoing. (Exhibit A, p. 6 at ¶¶ 2, 4.)

In the face of these overwhelming facts, Ullman continues to speculate that there must have been something wrong with the transaction, while openly admitting that she would have to go on a fishing expedition in Superior Court in hopes of finding any support for her conspiracy theories. (See Exhibit B, p. 2 at ¶ 3.) Respectfully, the role of the Board is to determine whether the Hearing Decision is tethered to the evidence admitted at the hearing, rather than indulge in Ullman’s baseless speculations.

With respect to Ullman’s argument made to the Hearing Officer that the sale price of Unit B was somehow suspect, Ullman does not repeat this argument on appeal, perhaps because it is incorrect as a matter of law. (See, e.g., Exhibit A, p. 6 at ¶ 2.) The first element of the BFP definition does not require that the buyer’s consideration be the fair market value of the property (or anything approaching it). *Melendrez v. D & I Inv., Inc.* (2005) 127 Cal.App.4th 1238, 1251 (fact that foreclosure buyer was experienced and paid substantially less than fair market value for the property did not preclude him from being a BFP).

In sum, there is substantial evidence in support of the finding by the Hearing Officer that Coleman was a bona fide purchaser for value. Nothing in Ullman’s brief on appeal compels a contrary result.

**(2) Ullman has waived all arguments regarding the second prong of BFP.**

To recall, the second prong of the BFP definition requires that the buyer “have no knowledge or notice of the asserted rights of another.” *Melendrez, supra*, at p. 1251. The Hearing Officer ruled as follows:

[I]n this case, the mere fact that the tenants have previously filed claims against the owner in this forum, does not mean that the tenants had any potential rights or claims as owners of the property. The *Melendrez* case involved a prior owner of the property, not a tenant. The mere fact that Coleman knew that the tenants had brought previous claims against the owner in this forum does not mean that he was not a bona fide purchaser.

(Exhibit A, p. 6, ¶ 4.) ***Ullman does not challenge this ruling on appeal***, as there is no law that affords tenants with a claim for property rights (i.e., ownership interest) as against the landlord. As such, the decision of the Hearing Officer as to the second prong of BFP should be allowed to stand.

**B. The decision does not raise new policy issues that require Board’s action.**

Ullman argues on appeal that the language of the Hearing Decision is “perilously vague” and that it raises “a new policy issue that has not been decided by the Board.” (Exhibit B, p. 2, ¶ 5.) A closer read of Ullman’s brief reveals that she had set up a classic straw man argument. First, Ullman takes the decision of the Hearing Officer that a friend may be a BFP under Section 1954.52(a)(3)(B)(ii) and extends it far beyond what the decision says: “[If best friend can be a BFP,] then why not his children or his brother? Can a landlord sell units to her minor children or her husband ...?” Then Ullman proceeds to attack the straw man she had created, threatening grave and “far-reaching implications” if “this board refuses to assign [the BFP language] any meaning.” (Exhibit B, p. 2 at ¶ 5, p. 3 at ¶¶ 1-4.)

To begin with, the concept of a BFP has been a fixture of California’s and federal jurisprudence for well over a century. Countless opinions, including those of the California Supreme Court, have assigned meaning to this term. At issue in this case is a private sale between two friends, not a sale to minor children—who are not even allowed to enter into contracts relating to real estate (Family Code § 6701(b))—or one’s spouse or siblings. Hidden behind the guise of “a new policy issue,” is the reality that Ullman is urging the Board to change the law. It is the role of the legislature and not the Board to amend the California Civil Code.

Moreover, the rule change advocated by Ullman is unworkable on its face and it runs afoul of the well-established principles against restraint on alienation of real property in California. See, e.g., *Chapman v. Great Western Gypsum Co.* (1932) 216 Cal. 420, 426 (“It hardly needs citation of authority to the principle that covenants

limiting the free alienation of property ... are barely tolerated and must be strictly construed.”). Consider the quagmire of the Hearing Officers or the Board having to enforce a rule against selling property to a “friend.” Would a casual acquaintance fit the mold, or would a decade or more of close “contacts” be required to reach the “friend” status? What types of “contacts” would rise to the level of a “friend”? In well over a century of jurisprudence on the meaning of a BFP, not a single court has ever adopted the interpretation sought by Ullman. The Hearing Officer also observed that there is no law against selling real estate to the people you know. (Exhibit A, p. 6 at ¶ 5.)

Consider further the issues with restricting the meaning of a BFP based on the subjective intentions of the seller and the buyer. Ullman argues that the law “should also mean that the original converter cannot exempt his property from rent control by conveying parts of it ... with the intention of pricing the tenants out of their home and turning a quick profit.” (Exhibit B, p. 3 at ¶ 3.) To be sure, Ullman fails to cite a single legal authority or precedent that would support her position that one’s subjective profit motivations may be used to restrict or burden residential real estate sales. Ullman’s interpretation would literally bar the original converters from benefitting from the very statute that was designed for their benefit. It would also create a significant added burden on the Hearing Officers and the Board to determine the subjective motivations of the parties to a real estate sale. It is also likely to be unconstitutional.

In sum, there is no “new policy issue” raised by this appeal that compels this Board to impose the arbitrary, unworkable and illegal restrictions suggested by Ullman.

**C. Ullman had every opportunity to present her case to the Hearing Officer.**

Ullman complains that the Hearing Officer “severely limited” her cross-examination of Tse and Coleman, sustained a number of relevancy objections made by Tse, and did not allow questioning “on a large variety of topics which would have elucidated Mr. Tse’s motives for selling the property.” (Exhibit B, p. 4 at ¶ 3.) She then proceeds to accuse Tse of a “deliberate campaign of retaliatory harassment” and complains that her “holistic analysis” of the sale “should not have been so conscripted.” (Exhibit B, p. 4 at ¶ 4.) Notably, despite her protestations, Ullman does not make a single legal argument as to any evidentiary objection or ruling.

Until Ullman persuades the legislature to change the law, motives for selling the property are not a factor in the BFP analysis, and Tse’s relevancy objections were properly sustained. A close read of the Hearing Decision reveals that Ullman was given exceedingly broad latitude to cross-examine both Tse and Coleman, and all documents except one were admitted into evidence without objection. (Exhibit A, p. 2 at fn. 1.)

The only document that was not admitted into evidence was a Redfin estimate regarding the value of the property. (Exhibit A, p. 5 at ¶ 3 and fn. 9.) The Redfin estimate was properly excluded because Ullman was not able to lay the foundation for

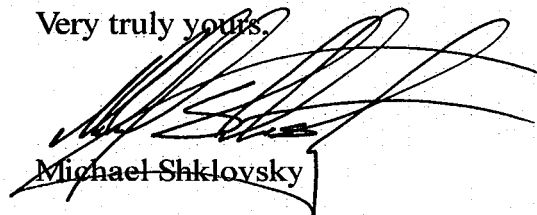
Lastly, the Hearing Officer limited Ullman's cross-examination of Tse on whether the units in question were legally subdivided. (Exhibit A, p. 5 at ¶ 5.) The Hearing Decision correctly notes that each of the units in the Building had individual APNs and whether the condominium status was properly granted "is not a determination that can be made by the RAP." (*Id.*) Ullman does not challenge the correctness of this decision in her appeal.

In short, other than appropriately limiting the questions to matters that were relevant to the issues before the Hearing Officer, Ullman was given every opportunity to present her case. There is ample evidence in the record before this Board to determine that the Hearing Decision is supported by substantial evidence and nothing further is required.

#### V. CONCLUSION

Ullman's appeal plainly lacks merit, as well as brings to mind the principle of Occam's razor: Among the competing hypotheses, the one with the fewest assumptions should be selected. The Board should see through the threats of further litigation and discovery expeditions and disregard the unsubstantiated conjectures and conspiracy theories. The law is clear: a private sale between friends will exempt the sold property from rent control. The fact that Coleman knew that he is purchasing a property that he can raise rent on is not unlawful. The fact that Ullman—an attorney—failed to find any legal authorities to support her arguments on appeal shows that these arguments are based on the view of the law as Ullman wishes it to be, not what the law actually is. Substantial evidence supports the Hearing Decision and the Board should affirm it.

Very truly yours,

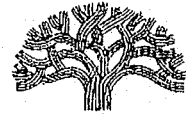


Michael Shklovsky

#### Enclosed Exhibits:

- A – Hearing Decision, dated June 23, 2016
- B – Appeal by Brianne Ullman, dated July 14, 2016
- C – Order re Continuance, dated January 20, 2017
- D – Email from Tse to Ullman, dated March 3, 2015
- E – Grant Deed, dated December 2, 2015
- F – Deed of Trust, dated December 2, 2015

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043

Department of Housing and Community Development  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
TDD (510) 238-3254

**HEARING DECISION**

**CASE NUMBERS:** T16-0073, Ullman v. Tse  
T16-0074, Hellman v. Tse

**PROPERTY ADDRESS:** 4410 Edgewood Ave, B & C, Oakland, CA

**DATE OF HEARING:** June 17, 2016

**DATE OF DECISION:** June 23, 2016

**APPEARANCES:** Bree Ullman, Tenant Unit C and Tenant Representative  
Sarah Hellman, Tenant Unit B  
James Coleman, Owner Unit C (by phone)  
Christopher Tse, Owner Unit B and Owner Representative

**SUMMARY OF DECISION**

① The tenant petition in case T16-0073 is denied. That unit is exempt from the Rent Adjustment Ordinance. The tenant petition in case T16-0074 is granted. That unit is not exempt from the Rent Adjustment Ordinance.

**CONTENTIONS OF THE PARTIES**

② Tenant Bree Ullman filed a petition in case T16-0072, which alleges that a rent increase exceeds the CPI Adjustment and is unjustified or is greater than 10%; that the contested increase is the second rent increase in a 12-month period; and that the proposed increase would exceed an overall increase of 30% in 5 years.

③ James Coleman, the owner of the condominium unit in which Ms. Ullman resides, filed a response to the petition in which he alleged that the unit is exempt from the Rent

① Adjustment Ordinance (Ordinance) because it is a single family residence or condominium exempted by the Costa-Hawkins Rental Housing Act.

Tenant Sarah Hellman filed a petition in case T16-0073, which alleges that a rent increase from \$1,660.30 to \$2,800 a month, effective April 2, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that the contested increase is the second rent increase in a 12-month period; and that the proposed increase would exceed an overall increase of 30% in 5 years.

③ Christopher Tse, the owner of the condominium unit in which Ms. Hellman resides, filed a response to the petition in which he alleged that the unit is exempt from the Rent Adjustment Ordinance (Ordinance) because it is a single family residence or condominium exempted by the Costa-Hawkins Rental Housing Act.

### THE ISSUES

1. Does the Rent Adjustment Program have jurisdiction over whether or not the subject units were converted into condominiums legally?
2. Was Unit B sold by Christopher Tse to a "bona fide purchaser for value"?
- ④ 3. If Unit B was sold to a bona fide purchaser for value, is the unit exempt from the Ordinance?
4. Is Unit C exempt from the Ordinance?
5. If Unit C is not exempt, is the rent increase allowed?

### EVIDENCE

⑤ The History of the Building: Christopher Tse testified that he purchased a 3 unit apartment building at 4410 Edgewood Avenue in roughly 2005. He began a condominium conversion project in 2007 before either of the tenants in the instant case moved into the building.<sup>1</sup> Each unit is approximately the same size and configuration; they are each 2 bedroom units that are approximately 810 square feet. In 2008, Mr. Tse was given separate Assessor Parcel Numbers (APN) for each unit and he started paying property taxes for three separate parcels, rather than for one parcel as before the condominium conversion was complete.

⑥ From sometime in 2009-January 1, 2012, Mr. Tse lived in unit C in the subject building. He produced PG&E bills showing that he lived in that unit.<sup>2</sup> He moved out on January 1, 2012, the same day that Ms. Hellman moved into the unit. Ms. Hellman testified that she moved into a unit in which Mr. Tse had previously lived.

⑦ Mr. Tse further testified that in May of 2015 he listed the whole building for sale, or in the alternative, the individual condominiums. After it was listed he heard from his realtor that Ms. Ullman had left some kind of threatening letter on her kitchen table

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<sup>1</sup> See Exhibit 5, which is only one page of the letter he received from the *City of Oakland*. This Exhibit, and all other Exhibits referred to in this Hearing Decision, was admitted into evidence without objection.

<sup>2</sup> Exhibit 8

① relating to the potential sale and so the realtors chose to withdraw from the contract they had with Mr. Tse. Ms. Ullman denied ever leaving any kind of threatening letter. Mr. Tse did not have any proof of this alleged letter. Tse testified that there had not been any offers made on the units before they were withdrawn from the market.

② Tse further testified that after withdrawing the units from the market, he sold Unit B in a private sale in December of 2015 to an old friend of his, James Coleman. He sold it for \$454,000.<sup>3</sup> Because Coleman knew that Tse wanted to sell the units, Coleman approached Tse about purchasing one of the units. They had an appraisal done, they looked at comparable sales and agreed on a price based on the appraisal. The unit was sold to Coleman on December 2, 2015.

③ Ullman testified that she moved into Unit B at 4410 Edgewood Avenue in April of 2010 at an initial rent of \$1,500 a month. When she moved in she was informed that the apartment was rent controlled. She was repeatedly served with *RAP Notices*. She was never served with any documents related to the condominium conversion.

④ Ullman further testified that on December 2, 2015, she was served with a rent increase notice purporting to increase her rent from \$1,601.11 to \$2,800 a month, effective February 8, 2016.<sup>4</sup> She received this by email. She did not ever receive it through the mail. According to the *Tenant's Petition*, this document was also served with a *RAP Notice*.

⑤ Mr. Tse testified that he sold unit A in the subject building to his girlfriend, Sousan Yahaghi, in January of 2016.<sup>5</sup> They based the purchase price as the same amount for which Tse had sold Unit B to Coleman. Tse further testified that he did not pay any money to Ms. Yahaghi to assist her in the purchase of the property from him.

⑥ Coleman testified that he purchased Unit B from Mr. Tse for \$454,000. He made a down payment of \$20,000 and took out a mortgage for the rest of the purchase price. There was an escrow opened when he purchased the property. Coleman further testified that he has known Christopher Tse for 8-10 years or longer and that he used to live in the unit that he purchased from Tse.

⑦ On cross-examination Coleman was asked for how long he had visited the apartment before agreeing to purchase it. He responded that he had lived in the unit in the past and had actually been in all three of the apartments in the subject property. Coleman denied knowing of any prior plans by anyone to purchase the entire property from Tse.

⑧ Coleman further testified that he was the one who suggested that he purchase the property from Tse. On cross-examination he testified that he gets the tenant's rent checks and deposits them and that he has written her eviction notices and posted them on her door. Additionally, he has an email address that he uses that is

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<sup>3</sup> Exhibit 4, the Grant Deed, shows the purchase price as \$454,000

<sup>4</sup> Exhibit 3

<sup>5</sup> Exhibit 9

① James4410@gmail.com that only he has access to. Mr. Tse does not have access to that email account.

② Tenant Ullman testified that since he purchased the property she has not met with Mr. Coleman and that her cross-examination of him was the first conversation she had had with him since he became the owner of her unit; that she has no way of contacting him other than via email; that he does not answer the phone; she has never seen him at the property; and that she believes she is communicating with Mr. Tse when she writes to the James4410@gmail.com email account. She further testified that she believes that Tse sold the property to friends for less money than he might have gotten on the open market and that this was a sign that the sales were not in good faith.

③ Ullman testified that Coleman came into her unit to see it before he purchased it but was in the unit for less than 60 seconds. After Coleman purchased the property, when he shower head broke, it was Mr. Tse, not Coleman, who came to her unit to attempt to repair it.

④ Coleman testified that no one but him has access to that email account. Tse testified that he does not have access to that email account.

⑤ Coleman testified that he did not receive any money from Mr. Tse prior to purchasing the unit.

⑥ Hellman testified that she moved into unit C at 4410 Edgewood Avenue, in January of 2012 at an initial rent of \$1,550 a month.<sup>6</sup> On January 28, 2016, she received a rent increase notice purporting to increase her rent from \$1,660.30 to \$2,760.67, effective April 2, 2016.<sup>7</sup> She received the rent increase notice because it was posted on her door. She possibly also got it in the mail but she does not remember.

⑦ Tse testified that his intent in selling the units was to be able to pay off his mortgage, which was an adjustable mortgage with rates that were increasing. After he sold the two units to Coleman and Yahaghi, he was able to pay off his mortgage. He provided proof that he paid off his mortgage.<sup>8</sup>

⑧ Tse further testified that he and Mr. Coleman did not decide together regarding a rent increase on the units they owned. After Coleman raised the rent on Unit B, Tse decided to raise the rent on Unit C to the same amount. Tse does not direct Coleman in the management of the property. Tse did not serve Coleman's rent increase notices or other documents. In one instance when Ullman's faucet was leaking, Tse tried to take care of the problem for Coleman because he was there doing work on the property.

⑨ Tse testified on cross examination that he had never spoken with Coleman and Yahaghi about selling the entire building together and that he has not decided whether or not he

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<sup>6</sup> Exhibit 6

<sup>7</sup> Exhibit 7

<sup>8</sup> Exhibit 10



① will sell the one unit he continues to own. Tse did not pay off the tenants in Unit A to leave the property. Tse testified that the reason he sold the units to Coleman and Yahaghi rather than on the open market is because he wanted to sell to them. Tse further testified on cross examination that he had informed Coleman and Yahaghi that there had been claims before the RAP regarding the owner's right to increase the rent.

② Ullman contended that because Tse sold the property to two of his close friends and not on the open market, there was evidence of some ulterior motive between the three now current owners to later sell the property after the tenants are priced out of the units (and the units are then vacant) all together for more money. She additionally contended that since the owners are all friends, that Tse retains some control over what happens in the building.

③ Ullman had offered into evidence a *Redfin* estimate regarding the value of the property. It was not admitted into evidence.<sup>9</sup>

④ Ullman additionally tried to argue that the units in question were not originally converted into condominiums through legal process. Her questions to Mr. Tse about this were limited by the Hearing Officer. (See below.)

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### **Does the Rent Adjustment Program have jurisdiction over whether the condominiums were legally subdivided?**

⑤ The tenants sought to argue that the units in question were not ever legally subdivided. The RAP does not have jurisdiction over whether or not the units in question were legally subdivided. At the time the tenants' petitions were filed, each of the units in question had individual Assessor Parcel Numbers (APN). Therefore, they were de facto condominiums (units that could be sold separately.) Whether or not the condominium status was improperly granted is not a determination that can be made by the RAP.

⑥ Therefore, the tenant's questions to the owner about the original condominium conversion process was limited in scope.

#### **Was Unit B Sold To a Bona Fide Purchaser for Value?**

⑦ The evidence in this case established that Christopher Tse purchased the entire 3 unit apartment building located at 4410 Edgewood Avenue in 2004. In 2007, he began a process to subdivide the units into condominiums. At some point in 2007 or 2008, that process was approved and Tse was given three Assessor Parcel Numbers for the three separate units, when in the past there was only one APN.

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<sup>9</sup> This document was not admitted into evidence because there was no substantiation as to how *Redfin* determined the purported value of the unit in question. Additionally, the document (which was 9 pages) contained numerous comments regarding other properties in a section entitled "*What It Takes To Win An Offer Near 94602*"

① In December of 2015, Tse sold Unit B to James Coleman. Coleman was a longtime friend of Tse's. He purchased the property for \$454,000. Twenty thousand dollars was paid by down payment, and Coleman financed the rest of the purchase price. There is no evidence that Tse paid any money to Coleman to purchase the property, or that Tse continues to control the unit in any substantive way. Since Coleman and Tse remain friends, the fact that Tse acted on Coleman's behalf to attempt a repair of a broken faucet does not change the basic facts.

② Additionally, Ullman's contentions that there is something wrong with the purchase because Tse sold both of the units he sold to longtime friends is pure speculation. There is no evidence of a conspiracy. Tse has the right to sell in a private sale, or to sell the units on the open market. He chose to sell in a private sale to someone he knows. There is no evidence that had he sold on the open market he would have gotten more money for the units, and as such, the private sale is somehow suspect.

③ The case cited by Ullman, *Melendrez v. D and I Investments, Inc.*, 127 Cal.App.4th 1238, does not require a different result. In that case the court upheld a sale where a borrower claimed that a trustee sale of property to a new buyer was invalid because the buyer should have known of the borrower's continued assertion of a right to the property under a repayment agreement. The court held that in order to be a "bona fide purchaser" the buyer had to "purchase the property in good faith *for value*, and (2) have no knowledge or notice of the asserted rights of another." *Id* at 1251. With respect to the question of the rights asserted by another, the court discussed that the buyer should not have "knowledge or notice of a competing claim."

④ However, in this case, the mere fact that the tenants had previously filed claims against the owner in this forum, does not mean that the tenants had any potential rights or claims as owners of the property. The *Melendrez* case involved a prior owner of the property, not a tenant. The mere fact that Coleman knew that the tenants had brought previous claims against the owner in this forum does not mean that he was not a bona fide purchaser.

⑤ There is simply no evidence that the prior owner did anything out of the ordinary. Ullman's claims are conjecture. Coleman sought to sell his property. He sold two of the three units to people he knew. There is no law against this. Coleman was a bona fide purchaser for value.

### **Is Unit B Exempt From the Rent Adjustment Program?**

⑥ The Oakland Rent Adjustment Ordinance (Ordinance) exempts single family residences and condominiums if they are exempt pursuant to the Costa-Hawkins Rental Housing Act, California Civil Code §1954.52.<sup>10</sup> California Civil Code Section 1954.52(a)(3) [Costa-Hawkins] provides that a dwelling or unit which is separately alienable from any other dwelling or unit is exempt from local rent control after the units are subdivided and then "sold separately by the subdivider to a bona fide purchaser for value."<sup>11</sup>

<sup>10</sup> O.M.C. § 8.22.030(A)(7)

<sup>11</sup> Civil Code Section 1954.52(a)(3)(B)(ii)

- ① In this case, the units were subdivided by Christopher Tse. After the subdivision, Tse sold Unit B to a bona fide purchaser for value. Therefore, Unit B is exempt from the Rent Adjustment Program.

### Is Unit C Exempt From the Rent Adjustment Program?

- ② The Costa-Hawkins Rental Housing Act holds that the original subdivider of a property is not exempt from rent control unless:

“all the dwellings or units except one have been sold separately by the subdivider to bona fide purchasers for value, and the subdivider has occupied **that remaining** unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred.” (Emphasis added.) Civil Code § 1954.52(a)(3)(B)(ii).

- ③ The evidence established that Christopher Tse lived in Unit B on the subject property from 2009-2012. However, he did not live there after the other two units were sold to Coleman and Yahagi.

- ④ Tse argued that it did not matter when he lived in the unit, as long as he lived there for at least one year after the subdivision occurred. Ullman argued that Tse had to live in the unit after the subdivision occurred for Tse to have the right to be exempt from rent control.

- ⑤ Ullman is correct. It is a maxim of statutory construction that “Courts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage.” (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22) Under general rules of statutory interpretation, an interpretation which has the effect of making statutory language null and void is to be avoided. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1010; *Prager v. Isreal* (1940) 15 Cal.2d 89, 93).

- ⑥ The key phrase to be analyzed in this subsection of the statute is the words “**that remaining**”. Tse’s unit does not become “that remaining” unit until after the other two units are sold. In order for Tse’s unit to be exempt from rent control he must have lived in the unit after he sold the other two units. He did not. Therefore, Unit C is not exempt from rent control.

### As to Unit C, is there any justification for the rent increase?

- ⑦ Tenant Hellman contested a rent increase she received purporting to increase her rent from \$1,660.30 to \$2,800, effective April 2, 2016. In the Owner’s Response, his only justification for the rent increase was his argument that the unit is exempt from the RAP.

- ⑧ As noted above, the unit is not exempt from the RAP. Without any other justification, the rent increase is invalid.

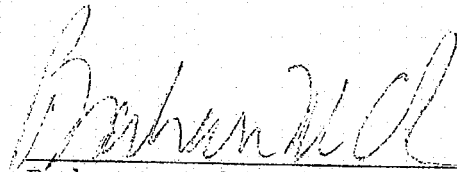
① Additionally, the RAP allows only one rent increase in any 12 month period. O.M.C. § 8.22.070(A). Official Notice is taken of case T15-0390. In that case the Hearing Officer upheld a rent increase to Ms. Hellman's unit effective August 1, 2015. No rent increase can be given to this tenant at any time before August 1, 2016. This is another reason why the rent increase is invalid.

② For these reasons, tenant Hellman's rent remains \$1,660.36.

**ORDER**

1. The petition of Tenant Ullman (T16-0073) is denied. The petition of Tenant Hellman (T16-0074) is granted.
2. Unit B is exempt from the Rent Adjustment Program. A Certificate of Exemption for the subject unit will be issued upon this Decision becoming final.
3. Unit C is not exempt from the Rent Adjustment Program.
4. The rent for Unit C remains \$1,660.36 a month.
5. The owner is not entitled to a rent increase on Unit C until August 1, 2016.
6. **Right to Appeal:** This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: June 23, 2016



Barbara M. Cohen  
Hearing Officer  
Rent Adjustment Program

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		<b>APPEAL</b>	
<b>Appellant's Name</b> Brianne Ullman		<b>Landlord</b>	<b>Tenant</b> <input checked="" type="checkbox"/>
<b>Property Address (Include Unit Number)</b> 4410 Edgewood Ave., Apt. B			
<b>Appellant's Mailing Address (For receipt of notices)</b> 4410 Edgewood Ave. Apt. B Oakland CA 94602		<b>Case Number</b> T160073	<b>Date of Decision appealed</b> June 24, 2016
<b>Name of Representative (if any)</b>		<b>Representative's Mailing Address (For notices)</b>	

I appeal the decision issued in the case and on the date written above on the following grounds:  
*(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)*

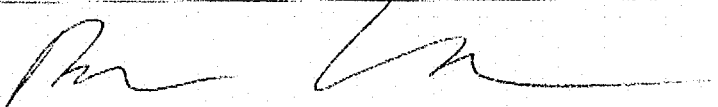
1.  **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2.  **The decision is inconsistent with decisions issued by other hearing officers.** You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3.  **The decision raises a new policy issue that has not been decided by the Board.** You must provide a detailed statement of the issue and why the issue should be decided in your favor.
4.  **The decision is not supported by substantial evidence.** You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
5.  **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.
6.  **The decision denies me a fair return on my investment.** You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached  Please number attached pages consecutively.

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on July 14, 2016, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Christopher Tse
<b>Address</b>	296 Parkview Terrace
<b>City, State Zip</b>	Oakland, CA 94610

<b>Name</b>	James Coleman
<b>Address</b>	490 Lakepark Ave #16091
<b>City, State Zip</b>	Oakland, CA 94610

	7/14/16
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

**IMPORTANT INFORMATION:**  
 This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.

BREE A. ULLMAN  
4410 Edgewood Avenue  
Oakland, CA 94602  
bre.esq@gmail.com

BEFORE THE RENT ADJUSTMENT PROGRAM  
CITY OF OAKLAND, CA

Factual Background and Explanation of Grounds for Appeal: Case #T160073

**Background:**

① Mr. Tse put the Edgewood Property on the Market in May of 2015. He then abruptly took the property off the market and filed a petition attempting to exempt himself from rent control, based on a 2007 condo conversion that he never completed.

② Last summer, I filed a brief in response to Mr. Tse's petition, arguing that the original condo converter may not benefit from his own conversion. The law is painstakingly clear on this point. Perhaps realizing that he did not have a legal leg to stand on, Mr. Tse withdrew his petition before a hearing could ever be held. He also attempted to "buy out" Ms. Hellman by paying her to move out of her unit. She refused. So Mr. Tse tried another strategy: he raised the rent on each apartment to \$2,800 and even threatened legal action against Ms. Hellman if she did not pay him \$4,000 as an increased "security deposit."

**Unit B: Transfer to James Coleman and Simultaneous Rent Raise**

③ On December 1, at the conclusion of a Rent Board hearing concerning his attempted capital improvements increases, Mr. Tse asked hearing officer Stephen Kastin whether he could raise the rent to anything he wanted if the units were sold separately. Mr. Kastin replied that he could not give legal advice. The very next day, December 2, 2015, Mr. Tse transferred my unit to his long-term friend and former-roommate, James Coleman. He sent me a nearly 70 percent rent increase (to \$2,800) the same day. Mr. Coleman had entered my unit one month prior, for approximately 60 seconds, before making this purchase. He did not even look at the bedrooms. He has not once responded to any of my phone calls regarding the property and has not been seen on the property even once since he purportedly became my landlord. The rent increase notices and other notices that he has sent me appear to have been actually authored and delivered by Mr. Tse. Mr. Coleman's phone number is a google voice subscription with no answering machine. The emails sent from James4410@gmail.com appear to be from Mr. Tse. When my shower faucet broke, it was Mr. Tse who entered my unit in a failed attempt to make

① a repair. When I suggested that I hire a handyman and deduct the cost from my rent, Mr. Tse agreed. I offered to let my "new landlord" know, but Mr. Tse said that he would just "tell James" himself. Mr. Coleman did not even show up at the June 17 rent board hearing. He allowed Mr. Tse to act as his representative.

**Unit A and C: Transfer of Unit A to Sousan Yaganhi and Rent Raise in Unit C.**

② On January 28, 2015 Mr. Tse then transferred Unit A to his long-term girlfriend. Property records indicate that he sold the unit for the exact same \$454,000 price that he sold my unit for. And, again, on the very same day, he raised Ms. Hellman's rent (whose unit he still owns) to the same \$2,800. Mr. Tse was evidently attempting to take advantage of the loophole that allows a landlord who has lived in a unit for more than a year (he did several years ago), and who sells off the "remaining units" to exempt his residence from rent control. He misread the law, (which requires residency *after* sale of the other units), and the Rent Board properly ruled against him. These facts are important to this appeal, however, because they indicate the strategy Mr. Tse was employing when he executed private sales to his best friend and his girlfriend and kept one remaining unit in his own name. The issue, as it pertains to Unit B, is whether the sale to Mr. Coleman was executed *in good faith*. It was not.

③ Until I have access to the full discovery tools available in the civil system, I cannot tell you whether actual money changed hands between Mr. Tse and Mr. Coleman or Mr. Tse and Ms. Yaganhi. I suspect that it did not. The record, however, already contains more than enough information to cast serious doubt on these transactions.

④ These transactions were designed by Mr. Tse (note the identical purchase prices and rent increases) with the specific purpose of exempting himself from rent control and pricing his tenants out of their homes. The sales to his closest friends were executed to justify the \$2,800 rent increases he is attempting to levy, not the other way around. The law does not tolerate this behavior, or at least, it should not reward such sham transactions with exemptions from rent control.

⑤ GROUND FOR APPEAL:

**3. The decision raises a new policy issue that has not been decided by the Board.**

At issue here is what constitutes a "bona fide" sale for the purposes of exempting a condominium from Oakland's rent control ordinance. Can a landlord sell individual units in his building to his friends and/or relatives in a quick private sale, impose a rent increase (through these agents) large enough to price the tenants out of their previously rent-controlled apartments and then turn a quick profit on the entire empty building? The Board's decision in case T160073 would appear to condone this behavior, though the language of the decision is perilously vague. If a condominium subdivider's best friend and partner may each serve as bona fide purchasers to exempt the property from rent control, then why not his children or



① his brother? Can a landlord sell units to her minor children or her husband in order to escape the reach of Oakland's RAP? At what point should the City cry foul?

② The City of Oakland is in a housing affordability crisis that threatens the health and welfare of the community. The interpretation of laws designed to close loopholes for landlords is thus an extremely important policy issue with potentially far-reaching implications.

③ In 2002, in order to curb the abuse of section 1954.52 through false condominium conversions, the legislature carefully excluded condominium units which have not been sold to a bona fide purchaser. In practical terms, this means that the original condominium converter may not exempt his own property from rent control simply by changing the designation of the property. It should also mean that the original converter cannot exempt his property from rent control by conveying parts of it to himself or his friends, with the intention of pricing the tenants out of their home and turning a quick profit. Presumably, this is why the legislature, in its 2002 amendments to the Costa Hawkins Act, added the requirement of sale to a "bona fide purchaser" rather than simply *any* purchaser for value. §1954.52(b)(2)

④ Unfortunately, this new "Bona fide purchaser" language does little to remedy the situation if this board refuses to assign it any meaning.

#### 4. The decision is not supported by substantial evidence

⑤ In determining that Mr. Coleman was, in fact, a bona fide purchaser, the hearing officer ignored significant, glaring facts indicating otherwise, relying almost entirely on the existence of a grant deed evidencing that a sale to Mr. Coleman occurred.

⑥ Tenant alleged that Mr. Tse sold her unit to Mr. Coleman for the sole purpose of evading Oakland's rent control laws and that Mr. Tse continued to make all decisions related to the entire property. At no time during the entire six months following his purchase did Mr. Coleman ever speak with tenant, respond to her phone calls, or visit the property despite tenant's multiple attempts to engage him. Whether Mr. Coleman is acting as an agent of Mr. Tse is entirely relevant in this case. The law prohibits a subdivider from benefiting from his own condo conversion. Selling to friends and family who will act as ~~an~~ agent or further ~~his~~ interests is an end-run around the law.   
Tse's Tse's

⑦ And so it is rather extraordinary that the hearing officer refused to draw any inferences from the fact that Mr. Coleman did not show up to defend his bona fide purchaser status and that he instead had Mr. Tse defend the rent increase that Coleman claimed to have imposed without input from Mr. Tse. Mr. Tse had, of course, imposed the exact same increase on his own tenants after selling another

unit in the building to his girlfriend. The very issue at the heart of this case is whether there was an arms-length transaction between Mr. Tse and Mr. Coleman or whether Mr. Coleman is simply acting in Mr. Tse's interest (for financial, collegial or other incentive). The fact that Mr. Coleman did not attend the hearing and instead asked Mr. Tse to represent his interests is instructive on this point. Moreover, the hearing officer supports her decision by stating that Mr. Tse has a "right to sell in a private sale to someone he knows" (Hearing Decision, p. 6) and that tenant's contentions that Mr. Tse sold to his girlfriend and his best friend to evade rent control laws are pure "speculation." Surely, Mr. Tse has "a right" to sell the property to anyone he likes, but he does not have a right to an automatic exemption from rent control unless that transaction is in good faith. In fact, the record is replete with evidence that cast serious doubt on whether arms-length transactions occurred. See "Background" *supra*.

The hearing officer simply wasn't willing to consider any of the evidence that indicated a lack of good faith in the transaction between Mr. Tse and Mr. Coleman (and Mr. Tse and Ms. Yahaghi). It should also be noted, that because discovery is not a tool available to Tenants in this administrative hearing, tenants simply do not yet have access to documents which would constitute irrefutable proof of landlord's fraudulent motives. Tenants have filed or will file a civil suit in Alameda County which will open up the appropriate records necessary to deciding this case. To issue a Certificate of Exemption to Mr. Tse at this point, without any discovery, would be irresponsible and against the interests of justice.

#### **5. I was denied a sufficient opportunity to present my case.**

The hearing officer severely limited Tenant's questioning of her absentee landlord, James Coleman, who appeared briefly by phone, as well as her questioning of the real party in interest, her former landlord, Christopher Tse. Mr. Tse was extremely uncomfortable with Tenant's questions about the sale of the property to his close friends and answered most questions with "How is that relevant?" The hearing officer, for the most part let him get away with this, and did not allow questioning on a large variety of topics which would have elucidated Mr. Tse's motives for selling the property.

For example, Mr. Tse has been threatening legal action against Ms. Hellman, the tenant in unit C, if she does not pay him an additional more than \$4,000 in security deposit funds that he unilaterally imposed when she refused to be bought out of the building. The tenants at the Edgewood property have been subject to a deliberate campaign of retaliatory harassment designed to get them to abandon their rights to their rent-controlled apartments. The hearing officer severely limited testimony on these matters, stating that Mr. Tse's motivation for the sale had little bearing on whether the sale was *bona fide*. In fact, determining whether a sale was done in good faith is a holistic analysis that should not have been so conscripted.



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA , SUITE 5313 · P.O. BOX 70243 · OAKLAND, CA 94612-2034

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6081  
TDD(510)238-7629

**ORDER**

**Re: Case No. T16-0073, Ullman v. Tse**  
**Address: 4410 Edgewood Avenue, Apartment B, Oakland, CA**

Background: On January 19, 2017, the tenant requested a continuance for the appeal hearing scheduled for January 26, 2017, on the grounds that she had a pre-arranged event . The request included documentation supporting the request.

**GOOD CAUSE APPEARING, IT IS HEREBY ORDERED** that the request is granted and the appeal hearing scheduled for January 26, 2017, is cancelled. **The Appeal Hearing in this matter is re-scheduled as follows:**

**Date: April 20, 2017**  
**Time: 7:00 p.m., or as soon thereafter as the matter may be heard.**  
**Place: City Hall, Hearing Room 1, One Frank H. Ogawa Plaza, Oakland, CA**

Other than the date of the hearing the Notice of Appeal Hearing sent on January 13,, 2017, is still in effect.

Date: January 20, 2017

  
Connie Taylor.  
Program Manager  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number T16-0073**

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

**Today, I served the attached Order by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Tenant**

Brianne Ullman  
4410 Edgewood Ave #B  
Oakland, CA 94602

**Owner**

James Coleman  
490 Lakepark Ave #16091  
Oakland, CA 94610

**Tenant Representative**

Sarah Hellman  
4410 Edgewood Ave #C  
Oakland, CA 94602

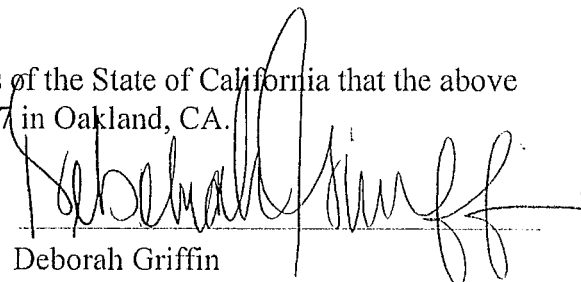
**Owner Representative**

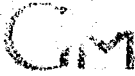
Christopher Tse  
296 Parkview Ter  
Oakland, CA 94610

Michael Shklovsky  
945 Cresta Way Apt. 18  
San Rafael, CA 94903

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 25, 2017 in Oakland, CA.

  
Deborah Griffin



Bree Ullman <bree.esq@gmail.com>

---

## Regarding your unit

1 message

---

christopher tse <ctse123@yahoo.com>  
Reply-To: christopher tse <ctse123@yahoo.com>  
To: Bree Ullman <bree.esq@gmail.com>

Tue, Mar 3, 2015 at 11:47 AM

Hi,

In the spirit of full disclosure, I am writing to inform you that I will be selling your unit upon completion. I have been considering this for the past several years but never had the means to do so. The financial burden created by both higher utility bills and my mortgage having adjusted to an affordable rate has led me to this decision.

In preparation for the sale, upgrades such as window replacement and paint to the exterior will be done during normal business hours. Proper notice will be given to you to work.

Additionally, schedule showings of your unit to prospective buyers will be made during reasonable business hours and on weekends with adequate notice.

It is important that you cooperate by allowing access to your unit and making sure it is in a clean and presentable condition. It is not necessary for you to be present during these showings however, if this is a preference for you, we will do our best to oblige.

Every effort will be made to accommodate you, and I would like to thank you in advance for your cooperation in this matter.

If you should have any questions or concerns, please feel free to contact me.

Best, Chris

**RECORDING REQUESTED BY**

CHRISTOPHER TSE

**AND WHEN RECORDED MAIL DOCUMENT TO:**

JAMES COLEMAN  
360 Grand Ave., #80  
Oakland, Ca 94610



2015319225

12/02/2015 04:01 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY

STEVE MANNING

RECORDING FEE:

21 00

COUNTY TAX:

499.40

CITY TAX:

6810.00



3 PGS

3  
CND

Space Above This Line for Recorder's Use Only

A.P.N.: 024-0546-039-00

File No.: \_\_\_\_\_

**GRANT DEED \$454,000.00**

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$ 499.4 ; CITY TRANSFER TAX \$ 6,810 ;

[  ] computed on the consideration or full value of property conveyed, OR

[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,

[ ] unincorporated area; [ ] City of \_\_\_\_\_, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Christopher Tse, An Unmarried Man

hereby GRANTS to

\* James Coleman, An Unmarried Man

\* JAMES COLEMAN,  
AN UNMARRIED MAN,

the following described property in the City of Oakland, County of Alameda, State of **California**:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE EXHIBIT A.

A.P.N.: 024-0546-039-00

File No.: \_\_\_\_\_

Dated: 12/02/15

CHRISTOPHER TSE

Mail Tax Statements To: **SAME AS ABOVE**

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 024-0546-039-00**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**Parcel One:**

Condominium Unit 4410/B of Lot 1 of Parcel Map No. 9483, filed September 26, 2007, in Book 302 of Parcel Maps, Pages 17 and 18, Official Records of Alameda County Records ("Official Records"), as such unit is shown on the Condominium Plan ("Plan") attached as an exhibit to the Declaration of Covenants, Conditions and Restrictions of 4410 Edgewood Avenue recorded April 25, 2008, Series No. 2008-140263 and as amended by First Amendment recorded April 28, 2015, Series No. 2015-110393 (collectively hereinafter referenced as the "Declaration"), Official Records, along with any further amendments recorded pursuant thereto.

**Parcel Two:**

An undivided 1/3rd interest as tenant in common in and to the Common Area lying within said Lot 1 of Parcel Map No. 9483, as shown on the Plan and defined in the Declaration, excepting and reserving therefrom the following:

- A.) All condominium units shown on the Plan and described in the Declaration.
- B.) Restricted Common Areas for possession, use and enjoyment of those areas designated on the Plan and defined in the Declaration.
- C.) Non-Exclusive easements for use, enjoyment, ingress, egress and support in and to the Common Area as shown on the Plan and described in the Declaration.
- D.) All easements as defined in the Declaration.

**Parcel Three:**

Non-Exclusive easements for use, enjoyment, ingress, egress and support in and to the Common Area as shown on the Plan and described in the Declaration, for the benefit of Parcel One hereinabove.

**Parcel Four:**

Restricted Common Area use easements, as shown on the Plan and described in the Declaration, appurtenant to Parcel One hereinabove, for the possession, use and enjoyment of:

- A. Garage G-B
- B. Steps ST-B
- C. Deck D-B

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

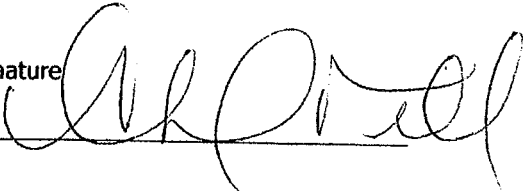
STATE OF California )SS  
COUNTY OF Alameda )

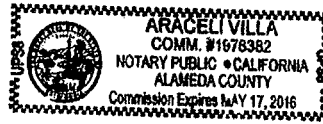
On Dec. 2, 2015 before me, Araceli Villa, Notary Public, personally appeared Christopher K. Tse

\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s); or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



Comm #1978382  
Expires May 17, 2016

*This area for official notarial seal*



**RECORDING REQUESTED BY**

Christopher Tse

**AND WHEN RECORDED MAIL  
ALL DOCUMENT TO:**

James Coleman  
360 Grand Ave., #80  
Oakland Ca 94610

*APR  
13  
WPD*



2015319226

12/02/2015 04:05 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY  
STEVE MANNING  
RECORDING FEE: 61.00



13 PGS

Space Above This Line for Recorder's only

**Deed of Trust**

THIS DEED OF TRUST (the "Trust") dated this 2nd day of December, 2015

BETWEEN:

**James Coleman of**

**360 Grand Ave., #80, Oakland, Ca 94610**

**(the "Trustor")**

- AND -

OF THE FIRST PART

**Christopher Tse of**

**296 Park View Terrace, #2, Oakland, Ca 94610**

**(the "Beneficiary")**

Initials: \_\_\_\_\_

*CT*     *JC*

**Deed of Trust**

OF THE SECOND PART

- AND -

**Christopher Tse of 296 Park View Terrace #2, Oakland, Ca 94610**

(the "Trustee")

OF THE THIRD PART

**Background**

A. The Trustor, being registered as owner of the estate in the following described property (the "Property") located at **4410 Edgewood Ave., #B, Oakland, Ca 94602** in Alameda County, State of California, United States with the following legal description:

**See Attached Exhibit A**

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B. No additions, alterations or improvements will be made by the Trustor without the Beneficiary's prior written consent. Any addition, alteration or improvement will be subject to all recorded easements, rights of way, conditions, encumbrances and limitations, and to all applicable building and use restrictions, zoning laws and ordinances, if any, affecting the Property.

IN CONSIDERATION OF the sum lent to the Trustor by the Beneficiary, in the amount of **\$431,300.00** U.S. DOLLARS (the "Principal Amount") the receipt of which the Trustor does hereby acknowledge itself indebted, the parties to this Trust agree as follows:

**U.C.C. Security Agreement**

1. It is agreed that if any of the Property herein trusted is of a nature so that a security interest in the Property can be perfected under the Uniform Commercial Code, this instrument will constitute a Security Agreement and Trustor agrees to join with the Beneficiary in the execution of any financing statements and to execute any and all other instruments that will be required for the perfection or renewal of such security interest under the Uniform Commercial Code.

Initials: CT iJC

## **Deed of Trust**

### **Governing Law**

2. This Trust will be governed by both the law of California and any applicable federal law ("Applicable Law"). All rights and obligations contained in this Trust are subject to any requirements and limitations of Applicable Law.

### **MATTERS RELATING TO PAYMENT**

#### **Promise to Pay**

3. The Trustor, for value received, promises to pay to the Beneficiary, on demand, the Principal Amount, interest and all fees and costs on the terms set out in this Trust or in any amendment, extension or renewal of the Trust and any additional amounts secured by this Trust on the terms elsewhere provided for such debts and liabilities.

#### **Interest**

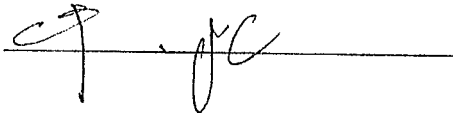
4. The Trustor agrees to pay the Principal Amount with interest before and after maturity and before and after default at the rate of **3.99 percent** calculated per annum and compounding monthly, (the "Interest Rate"). The Interest Rate will be calculated from the date this Trust begins (the "Interest Adjustment Date") and accrues until the whole of the Principal Amount is paid. The Loan will be repaid on the following terms:
  1. The Principal and interest will be repaid in consecutive monthly installments of **\$2,057.00** each on the 1st of each month;
  2. Monthly installment payment for this Trust begins on **January 1, 2016**;
  3. The balance, if any, of the Principal Amount and any interest thereon and any other moneys owing under this Trust will be due and payable on **January 1, 2018** (the "Maturity Date").

#### **Place of Payment**

5. The Trustor will make monthly payments at **296 Park View Terrace #2, Oakland, Ca 94610** or at a location later specified by the Beneficiary.

#### **Funds for Escrow Items**

6. The Trustor will pay to the Beneficiary, on the day periodic payments are due under this Trust, a sum (the "Funds") to provide for payment of (a) all taxes, assessments and other charges against the Property; (b) ground rents or other lease payments on the Property; and (c) premiums for any and all insurance required by Beneficiary.
7. If there is a surplus of Funds held in escrow, the Beneficiary will provide the Trustor with the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, the Beneficiary will notify the Trustor as required by the RESPA, and the Trustor will pay to the Beneficiary the amount necessary to make up the shortage in

Initials: 

## Deed of Trust

accordance with the RESPA.

8. The Trustor will notify the Beneficiary of all of amounts to be paid under this Section. At the Beneficiary's discretion, the Trustor will provide receipts of such payments to the Beneficiary. If the Trustor fails to make timely payments the Beneficiary can, at its discretion, make any payments for past due Escrow Items and the Trustor will be obligated to repay to the Beneficiary any such amount. The Beneficiary may waive the Trustor's obligation to pay for any or all Escrow items to the Beneficiary through written notice. If such waiver occurs, the Trustor is responsible to pay the amounts due for any Escrow Items. The Beneficiary can at any time revoke the waiver of any or all Escrow Item payments by written notice to the Trustor, and upon such revocation, the Trustor will pay to the Beneficiary all Funds, and in such amounts, that are then required under this Section.
9. The Beneficiary will collect and hold the Funds in accordance with the Real Estate Settlement Procedures Act (the "RESPA"). The Beneficiary will reasonably estimate the amount of Funds due in accordance with Applicable Law.
10. If there is a surplus of Funds held in escrow, the Beneficiary will provide the Trustor with the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, the Beneficiary will notify the Trustor as required by the RESPA, and the Trustor will pay to the Beneficiary the amount necessary to make up the shortage in accordance with the RESPA.

### Obligation to Pay without Set-off or Delay

11. The Trustor agrees to pay all amounts payable pursuant to this Trust and all additional amounts secured by this Trust without abatement, set-off or counterclaim. Should the Trustor make any claim against the Beneficiary either initially or by way of abatement, set-off or counterclaim, the Trustor agrees that any such claim will not diminish or delay his obligations to make the payments as provided in this Trust.

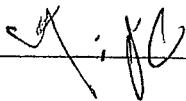
### Application of Payments and Interest after Default

12. All monthly payments received by the Beneficiary will first be applied in payment of the interest calculated at the Interest Rate, and second in payment of the Principal Amount. However, if the Trustor is in default, then the Beneficiary will apply any payments received during this period as the Beneficiary chooses. If the Trustor is in default in payment of any amount including interest, interest will be payable on the interest and other arrears at the Interest Rate compounded monthly.

### Annual Prepayment Privileges

13. When not in default, the Trustor may prepay an amount not greater than 100% of the original Principal Amount of the Trust anytime during the year, up to and including the anniversary date of the Interest Adjustment Date (the "Annual Prepayment").

Initials: \_\_\_\_\_

Handwritten initials, possibly "JK", written over a horizontal line.

## Deed of Trust

14. The Trustor may prepay any unpaid Annual Prepayment from previous years in addition to the Annual Prepayment from the current year.

## Full Prepayment Privileges

15. Trustor may, at any time after, one year of the term of the Trust or if renewed, after one year of the term of the last renewal of the Trust, prepay the full outstanding balance without penalty.

## Discharge

16. When the Trustor pays the Principal Amount, interest and all the other amounts secured by this Trust in full and notifies the Beneficiary in writing, the Beneficiary will execute a Deed or Reconveyance and record it to clear the title to the Property. The Trustor will give the Beneficiary a reasonable time after payment in which to prepare and issue the Deed of Reconveyance.

## Covenants and Warranties

17. The Trustor warrants and agrees that:
1. the Trustor has good title to the Property;
  2. the Trustor has the authority to trust the Property;
  3. on default, the Beneficiary will have quiet possession of the Property;
  4. the Property is free from all encumbrances;
  5. the Trustor will execute further assurance of the Property as will be required; and
  6. the Trustor has not done any act to encumber the Property.
18. The Trustee warrants and agrees that:

- a. Trustee will preserve the title to the Property and the validity and priority of this Trust and will forever warrant and defend the same for the Beneficiary against the claims of all persons.

## Fixtures and Additions

19. The Trustor agrees that the Property includes all property of any kind that is now or at any time in the future attached or fixed to the land or buildings or placed on and used in connection with them, as well as all alterations, additions and improvements to the buildings.

## Payment of Taxes and Other Encumbrances

20. The Trustor will pay all taxes and other rates levied on the Property and all accounts for utilities supplied to the Property and all charges, trusts, liens and other encumbrances on the Property when they are due and comply with his other obligations under them.

Initials:           ct    i    jc

## Deed of Trust

Upon the Beneficiary's request, the Trustor will immediately give receipts showing that the taxes and other accounts have been paid.

## No Sale Without Consent

21. The Trustee will not sell, transfer, lease or otherwise dispose of all or any part of the Property or any interest in the Property, or if a corporation, permit a change in control, without the Trustor's and Beneficiary's prior written approval and if approved, without such approved purchaser, transferee or lessee entering an assumption agreement in form satisfactory to the Beneficiary. Acceptance of any payments from a purchaser, transferee or lessee or after a change in control not approved in writing, will not constitute an approval or waiver by the Beneficiary.

## Additional Covenants for Condominium Unit

22. The following provisions apply to any condominium unit that is part of the Property:
  1. the Trustor will pay all contributions to common expenses of the condominium as they become due. The Trustor will provide the Beneficiary with proof of payment and compliance from time to time as requested by the Beneficiary. The Trustor will forward to the Beneficiary as received, copies of any notices, assessments, by-laws, rules and financial statements of the condominium corporation. The Trustor will provide any other documents and information received from the condominium corporation when requested by the Beneficiary;
  2. the Trustor will maintain all improvements made to the Trustor's unit and repair them after damage;
  3. the Trustor will insure all improvements made to the Trustor's unit; and
  4. the Trustor hereby assigns and authorizes the Beneficiary to exercise the Trustor's rights to vote and to consent. If the Beneficiary does not exercise such rights, the Trustor will do so, but will do so according to any instructions give by the Beneficiary. Trustor also authorizes the Beneficiary to inspect the condominium corporation's records. Nothing provided under this section puts the Beneficiary in possession of the Property.

## Property Insurance

23. Trustor will insure in the Beneficiary's favor all buildings on the Property that are the subject of the Trust. The insurance will include protection against damage by fire and other perils including "extended peril coverage" and any other perils that the Beneficiary requests. The insurance must cover replacement costs of any buildings on the Property in US dollars. The Trustor will choose the insurance company subject to the Beneficiary's right to disapprove. The insurance policies will include a standard trust clause stating that any loss is payable to the Beneficiary. This Trust will be enough proof for any insurance company to pay any claims to the Beneficiary and to accept instructions from the Beneficiary regarding any insurance claims.

Initials:           CJ ; JG

## Deed of Trust

24. The Trustor will provide the following at the request of the Beneficiary:
1. a copy of the insurance policy;
  2. receipts of all paid insurance premiums; and
  3. renewal notices and evidence of renewal completion.
25. In the event of loss, the Trustor will provide prompt notice to the Beneficiary and the insurance carrier. The Trustor will provide the Beneficiary with proof of all claims at the Trustor's own expense and do all necessary acts to enable the Trustor to obtain all insurance proceeds from the claim. The insurance proceeds, in whole or in part, will be applied to the restoration and repair of the Property, if the restoration and repair is economically feasible. If the restoration and repair is not economically feasible, the insurance proceeds will be applied to the remainder of the Trust, whether or not the balance of the Trust is then due. Any remaining funds from the insurance claim will be paid to the Trustor.

## Repair, Vacancy and Maintenance of the Property

26. The Trustor will maintain the Property in good order, condition and repair and will promptly make all necessary repairs, replacements, and improvements. The Trustor will not allow the Property to become or remain vacant without the written consent of the Beneficiary. The Trustor will not commit waste and will not remove, demolish or materially alter the Property or any part of it without prior written consent from the Beneficiary. The Beneficiary may, whenever necessary, enter upon and inspect the Property. If the Trustor, or anyone claiming under the Trustor, neglect to keep the Property in good condition and repair, or commit any act of waste on the Property, or do anything by which the value of the Property is diminished, as to all of which the Beneficiary will be sole judge, the Beneficiary may (but is not obliged to) enter the Property and effect such repairs or work as it considers necessary.

## Environmental Hazards

27. The Trustor will not use, store, release, deposit, recycle, or permit the presence of hazardous substances on the Property, generally accepted items for residential use excepted, which includes but not limited to asbestos, PCBs, radioactive materials, gasoline, kerosene, or other flammable petroleum products (the "Hazardous Substances"). The Trustor is also prohibited from performing any acts on the Property involving any Hazardous Substances that would materially affect the value of the Property or would require clean-up or remedial action under federal, state, or local laws and codes.

## DEFAULT AND REMEDIES Trustor Right to Quiet Possession

28. Until default by the Trustor under this Trust, the Trustor will have quiet possession and receive the rents and profits from the Property.

Initials: \_\_\_\_\_

*CF*     *JC*

## Deed of Trust

### Events of Default

29. The Trustor will be in default under this Trust upon the happening of any of the following events:
1. if the Trustor defaults in the payment of the Principal Amount, interest or any other amount secured by this Trust, when payment of such amount becomes due under the terms of this Trust or as elsewhere provided for any other amount secured by this Trust;
  2. if the Trustor defaults in the observance or performance of any term or covenant which the Trustor has agreed to observe or perform under this Trust or elsewhere;
  3. if any information or statement the Trustor has given or made before, at or after signing the Trust, in respect of the Property or the Trustor's affairs is incorrect or untrue at the time it was given or made;
  4. if the Trustor ceases or threatens to cease to carry on in a sound businesslike manner, the business in which the Trustor ordinarily conducts on, or with respect to all or any part of, the Property;
  5. if the Property is a condominium unit or units, a vote authorizes termination of the condominium or the sale of all or substantially all of the condominium corporation's assets or its common elements or the condominium corporation fails to insure the unit and common elements;
  6. if a petition in bankruptcy is filed against the Trustor, if the Trustor make a general assignment for the benefit of the creditors, if a receiver, interim receiver, monitor or similar person is placed or is threatened to be placed in control of or for the overview of the Trustor's affairs or Property, or in the opinion of the Beneficiary, the Trustor becomes insolvent;
  7. if a construction or similar lien is registered against the Property or if default occurs under any other lien, trust or other encumbrance existing against the Property;
  8. if the Trustor abandons or does not visibly and consistently occupy the Property;  
or
  9. if the Property or a material part of the Property is expropriated.

### Acceleration on Default

30. If at any time the Trustor should be in default under this Trust, then the Principal Amount, interest and all amounts secured by this Trust will, at the option of the Beneficiary, become due and payable immediately.
31. If at any time the Trustor is in default and the Beneficiary does not require the Trustor to pay immediately in full as described above, the Beneficiary will retain the right to seek full immediate payment if the Trustor is in default at a later time. Any forbearance on the part of the Beneficiary upon default, which includes but not limited to acceptance of late payment, acceptance of payment from third parties, or acceptance of payments less than the amount then due, will not constitute as waiver to enforce acceleration on default.

Initials:           *aj*    *je*



## **Deed of Trust**

32. In the event that the Beneficiary elects to accelerate the Trust, the Beneficiary will provide notice to the Trustor in accordance with Applicable Law.

## **Additional Charges**

33. The Trustor may be charged with fees in association with the default of this Trust or for the protection of the Beneficiary's interest for this Trust, which may include, but is not limited to attorneys' fees and property inspections (the "Additional Fees"). The absence of specific charges which may be levied against the Trustor in this Trust does not preclude the Beneficiary from charging such costs as Additional Fees. However, the Beneficiary will not charge any fees which are prohibited by Applicable Law and the Beneficiary will not charge any fees above and beyond the amount or percentage allowed under the Applicable Law. Any amount disbursed by the Beneficiary in relation to the protection of the Beneficiary's security will become Additional Fees payable by the Trustor. The Additional Fees will carry an interest rate of 3.99 percent per annum, compounding monthly. The Additional Fees' total including interest will become due upon written request by the Beneficiary.

## **Protection of Beneficiary's Security**

34. If at any time the Trustor should fail to uphold the covenants in this Trust, or if a legal proceeding commences which materially affects the Beneficiary's interest in the Property, the Beneficiary may pay or perform any reasonable action as necessary to protect the Beneficiary's interest, which includes, but is not limited to:
1. payment of insurance premiums and taxes, levies, accruing against the Property;
  2. payment of sums due secured by a prior lien which has priority over this Trust;
  3. payment of legal fees in relations to any legal proceedings or legal costs arising from the Property; and
  4. payment of reasonable costs in repairing and maintaining the Property.
35. Any action referred to in this section is optional for the Beneficiary and the Beneficiary has no duty or obligation to carry out any of the remedies listed in this section and will not incur any liability in the failure to perform such tasks.
36. Any amount disbursed by the Beneficiary in relation to the protection of the Beneficiary's security will become Additional Fees payable by the Trustor.

## **Power of Sale**

37. If at any time the Trustor should be in default under this Trust, the Beneficiary will have the right to foreclose and force the sale of the Property without any judicial proceeding. Any delay in the exercising of this right will not constitute as waiver on the part of the Beneficiary to exercise this option at a subsequent time should the Trustor remains in default or if the Trustor becomes default again in the future.

Initials:                      

## **Remedies on Default**

## Deed of Trust

38. The Beneficiary will have the right to pursue all remedies for the collection of the amounts owing on this Trust that are provided for by Applicable Law (both federal and state), whether or not such remedies are expressly granted in this Trust, including but without limitation foreclosure proceedings.
39. If the Beneficiary invokes the power of sale, the Beneficiary will cause the Trustee to execute a written notice of the event of default and the Beneficiary's election to sell the Property. The Beneficiary or the Trustee will mail copies of the notice as prescribed by Applicable Law to Trustor and other persons as required by Applicable Law. The Trustee will give public notice of sale to the Trustor in the manner provided for by Applicable Law. After the time required by Applicable Law, the Trustee, without demand on the Trustor, will sell the Property at public auction to the highest bidder, at the time and place and subject to the terms indicated in the notice of sale. The Trustee may postpone sale of the Property by public announcement at the time and place of any scheduled sale.

## MISCELLANEOUS MATTERS

40. Headings are inserted for the convenience of the parties to the Trust and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender mean and include the feminine gender and vice versa. Words importing persons include firms and corporations and vice versa.

## Severability

41. If any provision of this Trust will be held invalid or be prohibited by the Applicable Law, such provision will not invalidate the remaining provisions of this Trust and such provisions of the Trust will be amended or deleted as necessary to comply with the Applicable Law.
42. Nothing contained in this Trust will require the Trustor to pay or for the Beneficiary to accept interest in an amount greater than that allowed by Applicable Law. If the payment of interest or other amounts under this Trust would otherwise exceed the maximum amount allowed under Applicable Law or violate any law as to disclosure or calculation of interest charges, then the Trustor's obligations to pay interest or other charges will be reduced or amended to the maximum rate or amount permitted under Applicable Law.

## Joint Signatures

43. If the Trustor is more than one person or legal entity, each person or legal entity who signs it will be jointly and severally bound to comply with all covenants and obligations of the Trustor and the said covenants and obligations will bind all of the Trustor's successors and permitted assigns. The Trust will enure to the benefit of the Beneficiary and the Beneficiary's successors and assigns.

Initials:           *GA*          *JC*          

**Statutory Covenants**

## Deed of Trust

44. The covenants contained in this Trust are additional and supplemental, to the extent permitted by law, the covenants set out in the Applicable Law regarding trusts.

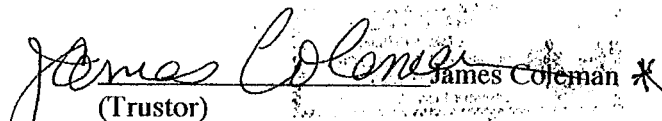
## Substitute Trustee

45. The Beneficiary may, at its option, from time to time appoint a new Trustee by an instrument executed and acknowledged by the Trustor and recorded in the office of the Recorder of the county in which the Property is located. The instrument will contain the name of the original Beneficiary, Trustee, and Trustor, the book and page where the Trust is recorded and the name and address of successor trustee. The successor trustee will succeed to all the title, powers, and duties conferred upon the Trustee.

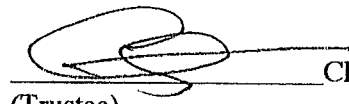
## Demands and Notices

46. Any notice given by either party in this Trust must be in writing. Unless otherwise provided in this Trust or prohibited by law, where this Trust allows or requires the Beneficiary to make a demand on or give a notice to any person (including the Trustor), the Trustor will make the demand or give the notice by:
1. delivering it to the person at the Property or person's last known address;
  2. by mailing it by prepaid registered mail addressed to the person at the Property or the person's last known address;
  3. by sending it by facsimile to the person's last known number; or
  4. where the person is a corporation, by so delivering or sending it to the last known address or number of a director, officer, employee or attorney of the corporation.
47. Any party in this instrument whose address has changed are responsible for notifying the other respective parties of the change in address.
48. Any notice or demand delivered as described will constitute as sufficient delivery. Any notice, demand, mail and facsimile (the "Notice") made will constitute as being effective on the same day that it was sent, unless the day in which the Notice was sent falls on a national holiday, Saturday or Sunday, in which case, the next business day would be considered as the day of receipt.

IN WITNESS WHEREOF the Trustor, has duly affixed his or her signature under hand and seal on this 2nd day of December, 2015

  
(Trustor) James Coleman \*

\* JAMES COLEMAN

  
(Trustee) Christopher Tse

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California )SS  
COUNTY OF Alameda )

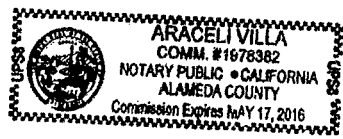
On Dec 2, 2015, before me, Araceli Villa, Notary Public, personally appeared Christopher K. Ise / James A. Coleman

, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]



Comm. # 1978382  
Expires May 17, 2016

*This area for official notarial seal*

**PROOF OF SERVICE**

**Re: Appeal of Case No. T16-0073**

**Appellant: Brianne Ullman**

**Respondents: James Coleman and Christopher Tse**

I am a citizen of the United States and a resident of Sonoma County, California. I am over the age of 18 years and not a party to the within action. My business address is 50 Old Courthouse Sq., 5<sup>th</sup> Fl., Santa Rosa, CA 95404.

On April 6, 2017, I served the within **BRIEF IN OPPOSITION TO THE APPEAL BY BRIANNE ULLMAN**, as follows:

**BY MAIL**

**BY FEDERAL EXPRESS**

By placing said document(s) in a sealed envelope with postage thereon (or Federal Express charges) fully prepaid, for collection and mailing, addressed as follows:

**SEE ATTACHED SERVICE LIST**

**BY PERSONAL SERVICE**

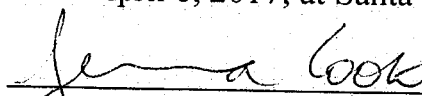
By causing said document(s) to be delivered to the offices of the addressee as set forth herein.

**BY FACSIMILE TRANSMISSION**

By sending said document(s) by facsimile transmission to the facsimile number set forth herein.

I am readily familiar with this firm's practice of collection and processing correspondence for mailing/Federal Express. It is deposited with the U.S. Postal Service or Federal Express depository on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 6, 2017, at Santa Rosa, California.

  
\_\_\_\_\_  
Jenna Cook

**SERVICE LIST**

Brianne Ullman  
4410 Edgewood Ave., Unit B  
Oakland, CA 94602